LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
http://www.in.gov/legislative

FISCAL IMPACT STATEMENT

LS 7001
BILL NUMBER: HB 1211

NOTE PREPARED: Jan 31, 2008
BILL AMENDED: Jan 29, 2008

SUBJECT: Various Home Loan Matters.

FIRST AUTHOR: Rep. Murphy
FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: <u>X</u> **GENERAL**
<u>X</u> **DEDICATED**
FEDERAL

IMPACT: State & Local

<u>**Summary of Legislation:**</u> (Amended) This bill has the following provisions:

DLGF Requirements- The bill requires the Department of Local Government Finance (DLGF) to establish an electronic system for the collection and storage of sales disclosure form data for real estate conveyances. The bill provides that the system must allow closing agents to input the sales disclosure form data into the system; and (2) submit the form electronically to a data base maintained by the DLGF. The bill requires the DLGF to make the data base accessible to county auditors, county and township assessors, and the Legislative Services Agency. The bill requires the DLGF to establish electronic systems that automatically apply: (1) the mortgage deduction to a person entitled to the deduction; and (2) the homestead credit to a person entitled to the credit. The bill provides that the systems must allow closing agents to: (1) input information about the mortgage transaction that is the basis for the deduction or the credit; and (2) submit the form electronically to data bases maintained by the DLGF. The bill requires the DLGF to make the data bases accessible to county auditors. The bill requires a county auditor to accept an electronic filing for the mortgage deduction or the homestead credit if the filing is complete. The bill prohibits a county auditor from requiring any other information or form of identification for a person to claim the mortgage deduction or the homestead credit.

The bill requires the DLGF to establish an electronic system for the collection and storage of the: (1) names; and (2) license, registration, or certificate numbers; of certain professionals that participate in or assist with residential mortgage transactions. The bill provides that the system must allow closing agents to: (1) input the required information with respect to each professional involved in the transaction; and (2) submit the form electronically to a data base maintained by the DLGF. The bill requires the DLGF to make the data base accessible to: (1) the state agencies responsible for regulating the specified professionals; and (2) the homeowner protection unit in the Attorney General's Office.

Closing Agent Requirements- The bill for residential mortgage transactions that close after June 30, 2008, and before January 1, 2010, requires a closing agent to do the following at the time of closing: (1) In the case of a first lien purchase money mortgage transaction, provide the customer with the sales disclosure form prescribed by the DLGF and the applications for the homestead credit and the mortgage deduction. (2) In the case of a refinancing, provide the customer with the application for the mortgage deduction. (3) Require the customer to complete and sign the form or forms provided. (3) Collect the signed and completed forms for filing. (4) Inform the customer of other specified property tax deductions by providing the customer with a form prescribed by the DLGF that describes the deductions. The bill requires the closing agent to file the signed forms with the appropriate county auditor.

The bill for a residential mortgage transaction that closes after December 31, 2009, requires a closing agent to input and submit the following information to the appropriate data bases maintained by the DLGF, as applicable: (1) Information to enable the customer to obtain the mortgage deduction and the homestead credit. (2) Sales disclosure form data. (4) The names and license, certificate, or registration numbers of specified professionals involved in the transaction.

Uniform Consumer Credit Code (UCCC) Regulation- The bill provides that: (1) purchase money mortgage transactions; and (2) refinancings of first lien mortgage transactions; are subject to regulation under the UCCC.

48-Hour Pre-closing Document Availability- The bill requires settlement service providers to make closing documents available to borrowers at least 48 hours before the closing.

Borrower's Rights- Provides that if terms of the home loan set forth in the documents provided differ from the terms presented to the borrower at the time of closing, the borrower is entitled to delay or reschedule the closing without penalty and without forfeiting the right to enter into the loan or the purchase contract.

Recommendation of Home Loan By Creditor- The bill prohibits a creditor from: (1) recommending or issuing a stated income or no documentation loan to a prospective borrower; or (2) recommending or issuing a home loan to a prospective borrower without first conducting a reasonable inquiry into the prospective borrower's creditworthiness. The bill provides that if a creditor conducts a reasonable inquiry, the creditor is not liable if the borrower later defaults on a home loan issued by the creditor.

Creditor Assistance Offer- The bill requires creditors to offer: (1) a temporary forbearance, subject to terms agreed upon by the creditor and the borrower; (2) a payment plan; or (3) an option for the refinancing, restructuring, or workout of existing indebtedness; whenever a home loan becomes 60 days past due.

Task Force- The bill requires various state agencies to form the Mortgage Lending and Fraud Prevention Task Force to coordinate the state's efforts to: (1) regulate the various participants involved in originating, issuing, and closing home loans; (2) enforce state laws and rules concerning mortgage lending practices and mortgage fraud; and (3) prevent fraudulent practices in the home loan industry and investigate and prosecute cases involving mortgage fraud. The bill requires the Securities Commissioner and the Director of the DFI to cooperate to determine the appropriate state agency or department to regulate a person subject to regulation, licensure, or registration under both the loan broker statute and the UCCC.

Repealer- The bill repeals provisions that exclude mortgage transactions from the UCCC.

Consumer Transaction Education- The bill, beginning during school year 2010, requires school corporations and accredited nonpublic schools to include in their curricula for grades 9 through 12 instruction designed to: (1) increase students' awareness of consumer transactions, including mortgage transactions; and (2) foster personal financial responsibility. The bill provides that a school corporation or an accredited nonpublic school may provide the instruction by integrating it into its mathematics curriculum. The bill requires the Department of Education and the Department of Financial Institutions to develop guidelines to assist teachers assigned to provide the instruction.

Effective Date: Upon passage; July 1, 2008; January 1, 2009.

Explanation of State Expenditures: (Revised) *DLGF Requirements/ Databases -* This bill would require the DLGF to build and maintain statewide data systems pertaining to single-family residences by September 1, 2009 that would:

1) Provide for the entry and maintenance of sales disclosure data;
2) Record real estate transactions; and
3) Automatically apply the mortgage and standard deductions, and the homestead credit when they apply.

All of these data would be entered by closing agents and would be available to local officials and state agencies. The database would be used for transactions that close after December 31, 2009.

Currently, the DLGF receives sales disclosure data from the counties after the fact. However, the system required under this bill would serve as the point of entry for these forms.

The real estate transaction system would record each transaction that involves single-family residences. The data captured would include identifying data of the brokerage business, loan originator, principal broker, salesperson, title insurance company and agent, real estate appraiser, and the mortgagee.

The cost of development and maintenance of these systems is currently unknown, but could be substantial.

Mortgage Lending and Fraud Prevention Task Force- The Task Force would consist of appointees from the Office of Secretary State (Securities Division), the Attorney General (Homeowner Protection Unit), the DFI, the Department of Insurance, the Indiana Real Estate Commission, and the Professional Licensing Agency via the Real Estate Appraiser Licensure and Certification Board. The Task Force would meet monthly to coordinate the state's efforts to regulate, enforce laws, and prevent fraudulent activities with respect to home loan matters.

The Task Force would report to the Legislative Council annually on their activities for the prior year relating to coordination efforts of home loan matters. Each agency involved may require additional administrative time to produce the required reports, as well as for meetings, including preparation, by the members of the Task Force. It is likely that each participating agency would be able to complete their administrative duties for the Task Force within their existing level of resources. This provision has an effective date of upon passage.

UCCC Regulation- Department of Financial Institutions Responsibilities- Under the bill, the DFI would be required to examine first mortgage lenders. Currently, the DFI only examines second mortgage lenders. Therefore, the DFI would be required to examine the holdings of first mortgage lenders including those second mortgage lenders that also make first mortgage loans. The impact of this provision on DFI expenditures and staff time is unknown as the number of potential lenders that would be regulated is unknown. The examination fees for the first mortgage lenders would be the same as other regulated lenders: $1,000 or a volume fee set by the DFI depending on which is applicable.

As of July 2, 2007, the DFI had four vacancies worth $205,000 in salary. The DFI reverted $133,127 from their operating account at the end of FY 2007. The DFI's dedicated fund appropriation for FY 2008 is $8.5 M.

(Revised) *Consumer Transaction Education-* This provision would require both the DOE and the DFI to develop instructional *guidelines* on personal consumer transaction education. Both departments would be able to carry out this provision within existing resources. The State Board of Education could adopt rules to implement the curriculum requirements within the course of a regularly scheduled meeting of the Board.

Explanation of State Revenues: (Revised) *Closing Agent Requirements-* Under the bill, if the closing agent did not properly file electronically a sales disclosure form, they would be subject to a civil penalty of $25 for each violation. The civil penalties would be placed into the Property Tax Replacement Fund (PTRF).

UCCC Regulation- Civil penalties in existing law would be applied as remedies for violations of this provision. In addition the bill would add a new civil penalty that could be assessed at the discretion of the DFI for UCCC violations under the bill. The amount of the civil penalty could not exceed $10,000 per violation.

Penalty Provision: For the provisions of the bill that fall under IC 24-9 (the state's Home Loan Practice Act), a violation of the Act constitutes a Class A misdemeanor. If violations of the new provisions of the bill (Inquiry of Creditworthiness, and Offering of Temporary Forbearance) were to result in additional court cases and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is $5,000. However, any additional revenue would likely be small.

Current law provides for civil penalties for violation of an injunction against a violator of the Home Loan Practice Act. Civil penalties cannot exceed $10,000 per injunction violation.

Explanation of Local Expenditures: (Revised) *Consumer Transaction Education-* The provision could increase school expenditures if an additional class, which would be required for graduation, were implemented. Included in the cost would be the purchase of suitable instructional materials, instructional time, and scheduling of class time. However, much if not all of the cost could be alleviated by a provision within the bill that would allow the instruction to occur within the math curriculum. Any increase in local expenditures would depend on local school board action.

Penalty Provision: A Class A misdemeanor is punishable by up to one year in jail.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, any change in revenue would likely be small.

State Agencies Affected: DLGF; Office of the Secretary of State Securities Division; DFI; DOE.

Local Agencies Affected: Trial courts, local law enforcement agencies; county auditors, schools.

Information Sources: Jeff Bush, Securities Commission, Office of the Secretary of State; *Report Pursuant to HEA 1717 on the Feasibility of the Regulation of Mortgage Brokers by the Indiana Department of Financial Institutions, November 1, 2007;* John Schroeder DFI.

Fiscal Analyst: Chris Baker, 317-232-9851.